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SENATE

REPORT
100-454

PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS AMENDMENTS ACT OF 1988

AUGUST 5, 1988.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 2393]

The Committee on Labor and Human Resources, to which was referred the bill (S. 2393) to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986, to reauthorize such Act, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass..

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I. SUMMARY OF THE BILL

The purpose of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (the Act) is to assist States to establish and operate a protection and advocacy system for mentally ill individuals (PAMI system or system) who are inpatients or residents in facilities rendering care or treatment. Under the Act, the mission of the system includes protecting and advocating the rights of mentally ill individuals under Federal and State laws or under the U.S. Constitution and investigating incidents of abuse and neglect of

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mentally ill individuals. The system is also authorized to pursue matters arising within 90 days after the mentally ill individual's discharge from a residential facility.

S. 2393, the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988 (the bill), reaffirms the thrust of the Act and includes several amendments that clarify and strengthen the ability of the systems to carry out their responsibilities.

The bill includes several amendments designed to clarify current law. First, "death" is specifically listed as a form of abuse and neglect. Second, the bill makes it clear that systems may investigate situations where a mentally ill individual's whereabouts are unknown. Third, the bill makes it clear that the system may investigate abuse and neglect of a mentally ill individual who is in the process of being transported to a facility. Finally, the bill clarifies that "records" as defined in the Act include reports of abuse and neglect prepared by a facility, as well as discharge reports. Thus, these documents may be accessed by the system under the applicable provisions of current law.

The bill also makes several changes related to the governance of the PAMI systems. First, the bill requires that in States which have multi-member governing boards, such boards be broadly representative of the clients they serve. Second, in the case of a system organized as a private nonprofit entity, the chairperson of the advisory council must be included on the governing board. Third, the system's priorities must be jointly developed by the governing board and the advisory council; however, final approval of the priorities remains with the governing board. Finally, the annual report prepared by the system must include a section by the advisory council describing the activities of the council and its assessment of the operations of the system.

In addition, the bill directs the Comptroller General of the General Accounting Office to prepare and submit a study of, among other things, whether individuals with mental illness held in Federal, State, and local jails and prisons are being subjected to abuse and neglect, or inappropriately confined to jails rather than being served by appropriate mental health programs.

Further, the bill includes several miscellaneous provisions. First, the bill provides that a system should consider entering into contracts with organizations, including in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals. Second, the bill increases the percentage of funds that may be used by systems for training and technical assistance from 5 to 15 percent. Third, the bill places a 2 percent cap on the amount of the appropriation the Secretary may use for technical assistance. Fourth, the bill establishes a grievance procedure for clients of the systems. Fifth, the bill provides for a three year application period.

Finally, the bill increases the minimum allotment for States from $125,000 to $140,000 if Congress appropriates at least $13 million. The authorization level is $14.3 million for FY 1989; $18.5 million for FY 1990; and $23.5 million for FY 1991.

II. Background and Need for the Legislation

THE SENATE INVESTIGATION OF 1984 AND HEARINGS OF 1985

On April 1–3, 1985, the Subcommittee on the Handicapped of the Senate Labor and Human Resources Committee, together with the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies, held three days of hearings on the care and treatment of institutionalized persons who are developmentally disabled, mentally retarded, and mentally ill. These hearings and an accompanying 246-page report (S. Hearing 99–50) represented the culmination of a 9-month Senate staff investigation of conditions in state-operated facilities for the developmentally disabled, mentally retarded and/or mentally ill. The findings of the investigation and hearings included the following with respect to individuals who are mentally ill:

1. Mentally ill individuals in residential facilities are vulnerable to abuse and serious injury;
2. Mentally ill individuals are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and
3. State systems for monitoring compliance with respect to the rights of mentally ill individuals vary widely and are frequently inadequate.

The findings of the Senate investigation combined with the testimony presented at the hearings indicated a need for further attention at the State and local levels to affirm and enforce the rights of individuals with mental illness, particularly those individuals in residential facilities.

THE 1986 LEGISLATION

The Protection and Advocacy for Mentally Ill Individuals Act of 1986 was the Congressional response to the Senate investigation and hearings. Introduced as Senate Bill 974 on April 24, 1985, the bill became Public Law 99–319 upon enactment on May 23, 1986.

The purpose of Public Law 99–319 is to assist States in establishing and operating a system which will protect and advocate the rights of such individuals, and investigate incidents of abuse and neglect of such individuals.

Specifically, the Act provides for the establishment of a Protection and Advocacy system for the Mentally Ill in each State. This system is authorized to advocate for and protect the rights of the mentally ill through activities to ensure the enforcement of Federal and State statutes and the United States Constitution. The PAMI system is operated by the existing protection and advocacy system authorized under the Developmental Disabilities Assistance and Bill of Rights Act. However, in carrying out its responsibilities, the PAMI system is encouraged to subcontract with existing mental health advocacy organizations in the State.

The PAMI system may investigate incidents of abuse and neglect of mentally ill individuals in residential facilities rendering care or treatment, if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred. The system may also pursue matters arising within 90 days after the discharge

of a mentally ill individual from a residential facility. The PAMI system is required to maintain the confidentiality of client records to which it gains access, and to establish an advisory board which includes consumers and family members.

Public Law 99–319 also relocated the Bill of Rights for the Mentally Ill, formerly existing as Title V of the Mental Health Systems Act (MHSA), to the Protection and Advocacy for Mentally Ill Individuals Act of 1986. The MHSA was enacted in 1980 to provide services to persons with mental illness. Most of MHSA was repealed and its authorities transferred to State control under the Alcohol, Drug Abuse and Mental Health Services Block Grant. However, Title V of MHSA, containing the Bill of Rights for the mentally ill, was retained in law. This Bill of Rights was relocated to the Protection and Advocacy for Mentally Ill Individuals Act because of its relevance to the legislation.

Finally, Public Law 99–319 provided authorizations for fiscal years 1986 through 1988.

HEARINGS AND TESTIMONY

Witnesses

The Subcommittee on the Handicapped held a hearing on Tuesday, May 10, 1988, to consider the reauthorization of the Act.

The first panel consisted of three witnesses representing mental health care consumers: William W. Snavely, Joseph Rogers, and Dayna H. Caron. Mr. Snavely is the President of the National Alliance for the Mentally Ill (NAMI), a national self-help network for families of persons with mental illnesses. Mr. Rogers represented the National Mental Health Consumers' Association, a national organization of present and former mental patients. Dayna Caron represented the National Alliance of Mental Patients, an organization which represents current and former inpatients of psychiatric institutions.

The second panel consisted of Eleanor S. Kohn, Steven Schwartz, and Renee Bostick. Ms. Kohn represented the National Mental Health Association and the Mental Health Association of Connecticut. Mr. Schwartz is the Director of the Center for Public Representation, a public interest law firm in Northhampton, Massachusetts, which functions as the protection and advocacy agency for Massachusetts. Accompanying Mr. Schwartz was Ms. Lori Incropera from Chelmsford, Massachusetts, who testified about the circumstances of her father's death at Worcester State Hospital. Renee Bostick, from Lansing, Michigan, is the President of the National Association for Rights Protection and Advocacy, a national advocacy organization of attorneys, advocates, ex-patients, and mental health employees and directors.

Issues raised

The testimony provided during the hearings and for the record revealed a number of issues for consideration in developing a reauthorization bill. The witnesses emphasized that the program has been in operation for only a short period of time and therefore should not be subjected to major changes. Instead the witnesses fo-

cused on amendments which would clarify certain provisions of the Act.

Clarification of the scope of coverage

The witnesses testified in support of several amendments to the Act which clarify that PAMI systems may consider "death" as a form of abuse and neglect, may investigate situations when a person's whereabouts are unknown, and may investigate abuse and neglect of a person who is in the process of being admitted to a facility. In addition, the witnesses urged the adoption of an amendment clarifying that reports of abuse and neglect, as well as discharge reports prepared by the facility, are considered "records" and are accessible to the system.

For example, Eleanor Kohn stressed the importance of ensuring the PAMI systems have appropriate access to clients and client records. She testified that access to facilities, residents and their records is essential if the agencies are to fully serve the needs of their clients. However, as she pointed out, experience with the program shows that the law is not sufficiently clear on the scope of access to the clients and their records. The witnesses were unanimous in their emphasis on the importance of clarifying these issues.

In his testimony Steven Schwartz focused on the issue of individuals who are too incapacitated to request assistance from a PAMI system and emphasized the need to clarify the access provisions of the Act. He stated that some facilities have prevented PAMI systems from serving persons who are unaware of their rights under Federal and State statutes and the U.S. Constitution and who are unaware of the existence of PAMI systems. Thus, many of these patients are excluded from protection and advocacy services. He also emphasized the importance of providing agencies with access to records and discharge planning sessions.

CLARIFICATION OF THE ROLES OF THE GOVERNING BOARDS AND THE ADVISORY COUNCILS

The consumer groups testified about their concerns regarding adequate consumer representation of the governing board and in the process of setting priorities for the systems. They supported an amendment to the Act which would ensure that program priorities are developed jointly by the PAMI system's governing board and advisory council. This is a major issue for the consumer groups, who described problems they were having in some States with the governing board not being responsive to their advisory council.

William Snavely reiterated the position of the National Alliance for the Mentally Ill in support of such an amendment stating that it empowers families and consumers of services. The Alliance has interpreted Congressional intent to include active involvement by the advisory boards, but cited several States where the practice has varied with regards to the degree of consultation between the advisory boards and governing bodies. Other witnesses corroborated Mr. Snavely's concerns about the need to encourage real consumer and family involvement in those PAMI systems that are actively or passively resisting their legal obligations to do so. The witnesses

noted that these systems are, in fact, missing out on the opportunity to use individuals who are capable of conducting training, monitoring, and advocacy in a cost-efficient manner.

INVESTIGATION OF ABUSE AND NEGLECT IN PRISONS AND JAILS

Several witnesses expressed concern that one of the negative consequences of deinstitutionalization without adequate community services is criminalization of persons with mental illness. They stated their belief that many people with mental illnesses are incarcerated in correctional facilities in lieu of treatment.

Witnesses also emphasized that the focus of the legislation has always been interpreted to be on abuse and neglect of mentally ill individuals, and not on the particular residential facility in which they reside. Therefore, they concluded, that if there are mentally ill individuals incarcerated in local prisons and jails, they should have access to State protection and advocacy services.

AUTHORIZATION LEVELS

Several witnesses cited the inadequacy of current funding levels for the PAMI systems and the need to provide for substantial increases. Numerous examples were cited of the impact of scarce funds on the systems' ability to fully serve mentally ill individuals in their States. Many States have limited their activities to one geographic area or to one facility. For example, Joseph Rogers pointed out the importance of providing a realistic increase in funding, particularly in light of amendments covering persons who have died or whose whereabouts are unknown and of persons during the admissions process.

III. Legislative Consideration and Votes in Committee

S. 2393 was introduced on May 13, 1988, by Mr. Harkin for himself and Senators Weicker, Kennedy, Hatch, Simon, Stafford, Adams, and Metzenbaum. Additional cosponsors included Mr. Cochran, Mr. Dole, and Mr. Durenberger. At the request of all members of the Subcommittee on the Handicapped, the bill was considered directly by the Committee on Labor and Human Resources.

In an Executive Session of the Committee on Labor and Human Resources on Wednesday, June 22, 1988, the motion to favorably report the bill with technical and conforming amendments was passed unanimously by voice vote of the Committee.

IV. Explanation of the Bill and Committee Views

IN GENERAL

The Committee restates its support for the Act as it currently exists. Although the Act was authorized for fiscal years 1986 through 1988, the first fiscal year saw no activity since grant awards were issued in September. As of August 1, 1988, the program has been operational for 22 months. Therefore, the Committee offers S. 2393 as a consensus bill which primarily includes clarifying amendments to the Act.

SCOPE OF COVERAGE

First, section 3 of the bill amends section 102 of the Act to make clarifications of several definitions included in the Act. Specifically, the bill amends the definition of "abuse" and "neglect" to add "death" to the list of manifestations of "abuse" or "neglect". Currently, the Act only includes "injuries."

The Committee includes this clarifying amendment to eliminate any doubt that the death of a mentally ill individual may be investigated by a PAMI system under this Act.

In addition, the bill amends the definition of "mentally ill individual" to include an inpatient or resident in a facility rendering care or treatment even if the whereabouts of the individual are unknown, and an individual who is in the process of being admitted to a facility rendering care or treatment, including situations which occur during transport of an individual to such a facility.

The intent of these changes is simply to extend coverage under the Act to mentally ill individuals in these two situations and not to change the nature of a system's authority under the Act. Thus, for example, it is not the Committee's intent to authorize the system to provide assistance at commitment hearings.

Furthermore, consistent with section 301 of the Act, these amendments should not be construed as establishing any new rights for mentally ill individuals. Thus, for example, if a mentally ill individual being transported to a facility does not otherwise qualify for admission by the facility, such an individual does not gain that right by virtue of this provision.

Finally, the definition of "neglect" contained in the Act is amended to clarify that the failure to provide a safe environment may include the failure to maintain adequate numbers of appropriately trained staff. The Committee is aware that direct care workers in residential facilities are faced with the enormous and often difficult task of providing quality care and treatment to individuals with mental illness.

During the reauthorization hearing on the Act, several witnesses spoke of systemic conditions that negatively impact the working environment encountered by direct care workers. These adverse conditions include inadequate staffing levels and inadequate staff training. The existence of such conditions increases the likelihood that not only clients, but direct care staff, will be at risk of physical injury.

The Committee recognizes that in some facilities the efforts of even the most dedicated care staff to provide quality treatment continue to be frustrated by such systemic conditions, which can foster abuse and neglect. The Committee believes that the protection and advocacy activities authorized in this legislation will have a positive impact upon the working environment.

Consistent with section 301 of the Act and the statement of intent set out on page 9 of Senate Report No. 99–109, this amendment does not grant any new rights to mentally ill persons but reaffirms the original intent of the Act establishing a system of advocacy to help protect currently established rights articulated in Federal and State laws or under the Constitution of the United States.

ESTABLISHMENT, COMPOSITION, AND RESPONSIBILITIES OF GOVERNING BOARDS

Section 4 of the bill amends section 105 of the Act in order to clarify the relationship of the advisory council to the PAMI system, and, in those instances when the system has a governing board to clarify the relationship of the governing board to the advisory council in the setting of priorities for the system.

Specifically, section 4 of the bill amends the Act to rename the "board", authorized in section 105(a)(6) of the Act to provide advice to the system in policies and priorities. Such "board" is renamed an "advisory council".

In addition, section 4 clarifies that, in situations in which the PAMI system is organized as a private nonprofit entity with a multi-member governing board or a public system with a multi-member governing board, such governing board should be selected according to the policies and procedures of the PAMI system. In addition, the membership of the governing board is specified in the bill to include members (to be selected no later than October 1, 1990) who broadly represent the clients served by the system.

This amendment is included in the bill in order to ensure that protection and advocacy systems, which historically served persons with developmental disabilities, have added to their governing boards representatives of the mental health community who are knowledgeable about the special advocacy needs of mentally ill individuals, including individuals who have received or are receiving mental health services and family members of such individuals.

In the case of a system organized as a private nonprofit entity, the governing board must also include the chairperson of the advisory council of the system.

Finally, section 4 of the bill outlines the responsibilities of the governing board, or the person acting in the capacity in States that do not have a multi-member governing board. These responsibilities include the planning, design, implementation and functioning of the PAMI system, and joint development with the advisory council of the system's annual priorities.

The Committee included the latter provision to ensure full and active participation of the advisory council in the discussion and development of the system's annual priorities. This amendment will require the governing board to fully engage the advisory council in developing the system's annual priorities.

The Committee recognizes, however, that the final authority for the planning, designing, implementing, and functioning of the system continues to rest with the governing board. Thus, the final decision regarding priorities remains with the governing board.

ADVISORY COUNCIL REPORT

Section 5 of the bill also relates to the advisory council. This section amends section 105 of the Act to include a new requirement for inclusion in the annual report submitted by the system. This new section should be prepared by the advisory council and should describe both the activities of the council and its assessment of the operations of the system.

The Committee recognizes the importance of input from the advisory council and the useful guidance PAMI systems have received from these councils in setting priorities. Because at least one-half of the members of advisory councils must be people who have received or are receiving mental health services or who are family members of such people, these councils have a valuable perspective on the advocacy needs of individuals with mental illness, as well as on potential priority areas for the system.

ACCESS TO RECORDS

Section 6 of the bill amends section 106 of the Act, relating to access by the system to client records, in order to clarify use of the term "records". As amended by the Committee bill, the term "records" includes reports of incidents of abuse and neglect prepared by and for the facility staff, as well as discharge papers. These records must be made available only under circumstances consistent with other provisions of the Act.

The Committee intends that PAMI systems have access to this information in order to effectively carry out their protection and advocacy and investigatory responsibilities. The authority includes access to supporting documents, under circumstances consistent with other provisions of the Act.

It is also the Committee's intent that systems continue to have access to meetings within the facility regarding investigations of abuse and neglect and to discharge planning sessions only under circumstances currently authorized under the Act.

GENERAL ACCOUNTING REPORT

Section 7 of the bill amends section 114 of the Act in several ways. First, a new subsection (c) is added directing the Comptroller General of the General Accounting Office to prepare and submit to the appropriate Committees of Congress a report on mentally ill individuals in prisons or jails. This report must identify, among other things, whether such individuals are subjected to abuse and neglect, the extent to which such individuals are inappropriately confined in prisons or jails and the factors contributing to such inappropriate placements.

The report must also describe model State and local programs designed to divert mentally ill individuals from prisons and jails and place them into appropriate mental health programs. In addition, the report must describe the extent of knowledge or training on the special needs of mentally ill individuals received by public defenders, and the extent to which such defenders represent such individuals when incidents of abuse or neglect are alleged.

The Committee recognizes that mentally ill individuals may be inappropriately confined in jails, and is concerned that such facilities not be use for the "dumping" of such persons. The Committee expects that the report by the General Accounting Office, due no later than 18 months after the date of enactment of the new subsection, will provide much needed information on the status of mentally ill individuals in the criminal justice system. The Committee stresses, however, that mentally ill individuals are currently

eligible for protection and advocacy services if they reside in prisons and jails rendering care or treatment.

In order that the heading preceding section 114 in the Act accurately reflect the requirments of the section, section 7(1) of the bill includes a technical amendment which removes the words "by the Secretary" in such heading.

MISCELLANEOUS PROVISIONS

Section 8 of the bill includes a number of miscellaneous provisions. First, section 8(a) of the bill amends section 104 of the Act to clarify that in their use of allotments, an eligible system should consider entering into contracts with organizations, including in particular groups run by individuals who have received or are receiving mental health services or the family members of such individuals.

The Committee stresses the importance of groups as valuable resources to the system. Contracts entered into with these groups and others must be consistent with the provisions of the Act, thereby assuring that contractors will be held to the same standards of compliance with the Act as the PAMI system.

Second, section 8(b)(1) of the bill amends section 104(b)(2) of the Act to increase the pecentage of funds that may be used by PAMI systems for training and technical assistance from 5 to 15 percent. The Committee recognizes that the 5 percent limitation included previously may be insufficient given the range of training and technical assistance needs of the systems for working with mentally ill individuals. The Committee feels that up to 15 percent of a system's allotment for the fiscal year should be sufficient for these purposes.

In addition, section 8(b)(2) of the bill amends section 115 of the Act to provide clarification and direction to the Secretary on the use of funds by the Secretary for technical assistance to PAMI systems. The amendment directs that the Secretary shall use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems. The Committee intends that technical assistance provided by the Secretary reflect the stated needs as identified by the systems.

Third, section 8(c) of the bill amends section 105 of the Act to add requirements for (1) public input in the setting of priorities by the system, and (2) establishment of a grievance procedure for clients or prospective clients of the system.

The Committee has added these requirements of the system in order to further ensure that mentally ill individuals and others have input on the priorities established by the PAMI system and have full access to the services of the system, consistent with the established priorities. These amendments are consistent with requirements of the Protection and Advocacy System authorized under the Developmental Disabilities Assistance and Bill of Rights Act, as amended by Public Law 100–146.

Fourth, section 8(d) of the bill amends section 111 of the Act to clarify that applications submitted to the Secretary under section 111, and the assurances required under that section, shall remain in effect for a 3-year period. The Committee has included this

amendment to conform the policy under the Act with current policy under the Developmental Disabilities Assistance and Bill of Rights Act.

Finally, section 8(e) of the bill amends section 112(a) of the Act to increase the minumum allotment for States from $125,000 to $140,000, if there is at least a $13 million appropriation. The bill also authorizes the Secretary to increase the minimum administratively under the same circumstances applicable to protection and advocacy systems under the Developmental Disabilities Assistance and Bill of Rights Act.

Section 8(f) of the bill provides authorization of appropriations of $14,300,000 for fiscal year 1989, $18,500,000 for fiscal year 1990, and $23,500,000 for fiscal year 1991. The Committee recognizes that the PAMI systems are currently unable to provide services to a significant number of eligible mentally ill individuals, and has increased the authorization levels to reduce the number of eligible but unserved individuals.

Two additional issues were raised during the hearings. The first issue concerns the role of the PAMI system in advocating and protecting the rights of mentally ill individuals who are uninformed about their established rights under Federal and State statutes and the U.S. Constitution and uninformed about the role of the system under the Act.

The Committee believes that it is not necessary to amend current law to address this issue. Under sections 101, 103, and 105 of the Act, systems are expected to protect and advocate for the rights of mentally ill individuals. This obligation may be exercised in various forums, including meetings with mentally ill individuals within the facilities providing care and treatment (section 105(a)(3)).

The Committee expects that facilities will provide the PAMI system with reasonable access to all inpatients and residents in such facilities to enable the systems to inform all such individuals of their rights under Federal and State law and the U.S. Constitution and to explain the nature and scope of the system's authority under the Act. Informing a mentally ill individual of his or her rights is a critical function of a protection and advocacy system.

It is also the Committee's expectation that the system will communicate this information to and respond to questions by mentally ill individuals in an appropriate, meaningful, and effective manner, taking into consideration the nature and severity of the particular individual's disability.

The second issue raised during the hearings concerns the applicability of the Act to Federal facilities. It is the Committee's clear intent that the PAMI system is authorized to use funds under this Act to provide representation to mentally ill individuals in Federal facilities who request representation by the PAMI system and that such representatives be accorded all the rights and authority accorded to other representatives of residents in Federal facilities.

V. Regulatory Impact

The Committee has determined that there will be minimal increases in the regulatory burden imposed by this bill.

VI. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 23, 1988.

Hon. Edward M. Kennedy,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2393, as ordered reported by the Senate Committee on Labor and Human Resources on June 22, 1988.

If you wish further details on this estimate, please call me or have your staff contact Lori Housman (226–2820).

Sincerely,

James L. Blum,
Acting Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2393.
2. Bill title: Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988.
3. Bill status: As ordered reported from the Senate Committee on Labor and Human Resources on June 22, 1988.
4. Bill purpose: To amend and reauthorize the Protection and Advocacy for Mentally Ill Individuals Act of 1986.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Protection and advocacy systems:					
Authorization levels	14.3	18.5	23.5	—	—
Estimated outlays	9.4	16.8	21.7	7.9	0.5

The costs of this bill would fall within budget function 550.

Basis of estimate: S. 2393 would reauthorize federal funds to assist states with their protection and advocacy systems for mentally ill individuals. All of the authorization levels were stated in the bill. The CBO assumes that all authorizations are fully appropriated at the beginning of each fiscal year. Outlays are estimated using spendout rates computed by CBO on the basis of recent program data.

6. Estimated cost to State and local government: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Lori Housman.
10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

VII. Section-by-Section Analysis

Section 1. This section specifies that the bill may be cited as the "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988".

Section 2. This section specifies that references in the bill to a section of "the Act" are to the Protection and Advocacy for Mentally Ill Individuals Act of 1986.

Section 3. This section amends the definitions of the terms "abuse" and "neglect" to include "death" as a form of abuse and neglect; and amends the term "mentally ill individual" to include an inpatient or resident in a facility even if the whereabouts of such inpatient or resident are unknown and a person who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility. This section also amends the term "neglect" to clarify that the failure to provide a safe environment may include the failure to maintain adequate numbers of appropriately training staff.

Section 4. This section renames the "board" (established under section 105(a)(6) of the Act) the "advisory council" and specifies the composition and responsibilities of governing boards, including the responsibility to jointly develop the annual priorities of the system with the advisory council.

Section 5. This section amends section 105(a)(7) of the Act, which requires the preparation of an annual report by the system, to include a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system.

Section 6. This section clarifies that the term "records" under section 106(b) of the Act includes reports of incidents of abuse and neglect prepared by the facility staff, and discharge papers under circumstances consistent with other provisions of the Act.

Section 7. This section amends section 114 of the Act by directing the Comptroller General of the General Accounting Office to prepare and submit a report on the status of mentally ill individuals in jails and prisons.

Section 8. This section includes miscellaneous amendments to the Act. First, section 104(a)(2) of the Act concerning subcontracting is amended by including in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals. Second, section 104(b)(2) of the Act is amended by increasing the minimum amount of a grant that can be used for technical assistance from 5 to 15 percent.

Third, section 115 of the Act is amended by specifying that not more than 2 percent of the amount appropriated under the Act may be used by the Secretary for technical assistance provided to the systems, consistent with requests by such systems for such assistance. Fourth, section 105(a) is amended by specifying that systems must provide the public with an opportunity to comment on the priorities established by and the activities of the system and must establish a grievance procedure for clients or prospective clients.

Fifth, section 111 of the Act is amended to provide that applications shall cover a three year period. Sixth, section 112(a) of the

Act is amended to increase the minimum allotment. Finally, section 117 is amended to authorize to be appropriated $14,300,000 for fiscal year 1989, $18,500,000 for fiscal year 1990, and $23,500,000 for fiscal year 1991.

VIII. Changes in Existing Law

In compliance with rule XXVI, paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE I—PROTECTION AND ADVOCACY SYSTEMS

Part A—Establishment of Systems

FINDINGS AND PURPOSE

Sec. 101. * * *

DEFINITIONS

Sec. 102. For purposes of this title:

(1) The term "abuse" means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury *or death* to a mentally ill individual, and includes acts such as—

(2) * * *

(3) The term "mentally ill individual" mean an individual—

(A) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(B)*(i)* who is an inpatient or resident in a facility rendering care or treatment[.], *even if the whereabouts of such inpatient or resident are unknown; or*

(ii) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility.

(4) The term "neglect" means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury *or death* to a mentally ill individual or which placed a mentally ill individual at risk of injury *or death*, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a mentally ill individual, the failure to provide adequate nutrition, clothing, or health care to a mentally ill individual, or the failure to provide a safe environment for a mentally ill individual, *including the failure to maintain adequate numbers of appropriately trained staff.*

(5)–(6) * * *

ALLOTMENTS

Sec. 103. * * *

USE OF ALLOTMENTS

SEC. 104. (a)(1) An eligible system may use its allotment under this title to enter into contracts with State agencies and nonprofit organizations which operate throughout the State. In order to be eligible for a contract under this paragraph—

(A) such an agency shall be independent of any agency which provides treatment or services (other than advocacy services) to mentally ill individuals; and

(B) such as agency or organization shall have the capacity to protect and advocate the rights of mentally ill individuals.

(2) In carrying out paragraph (1), an eligible system should consider entering into contracts with organizations [which, on the date of enactment of this Act] *including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which* provide protection or advocacy services to mentally ill individuals.

(b)(1) If an eligible system is a public entity, the government of the State in which the system is located may not require the system to obligate more than 5 percent of its allotment under this title in any fiscal year for administrative expenses.

(2) An eligible system may not use more than [5 percent] *15 percent* of any allotment under this title for any fiscal year for the costs of providing technical assistance and training to carry out this title.

SYSTEM REQUIREMENTS

SEC. 105. (a) * * *

(1)–(5) * * *

(6) establish [a board] *an advisory council*—

(A) which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of mentally ill individuals; and

(B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals, and at least one-half the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year[.], *including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;*

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system; and

(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system.

(b) * * *

(c)(1) In States in which a system established in a State under section 103 to protect and advocate the rights of mentally ill individuals is organized as a private nonprofit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

(A) members (to be selected no later than October 1, 1990) who broadly represent the clients served by the system; and

(B) in the case of a system organized as a private non-profit entity, members who broadly represent the clients served by the system including the chairperson of the advisory council of such system.

(2) The governing board established under paragraph (1), and the person acting in the same capacity as such in States that do not have a multi-member governing board, shall—

(A) be responsible for the planning, design, implementation, and functioning of the system; and

(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.

ACCESS TO RECORDS

SEC. 106. (a) * * *

(b) (1)–(2) * * *

(3)(A) As used in this section the term "records" includes reports of incidents of abuse and neglect prepared by the facility staff, and discharge papers under circumstances consistent with other provisions of this Act.

(B)–(C) * * *

LEGAL ACTIONS

SEC. 107. * * *

PART B—ADMINISTRATIVE PROVISIONS

APPLICATIONS

SEC. 111. *(a)* No allotment may be made under this title to an eligible system unless an application therefor is submitted to the Secretary. Each such application shall contain—

(1) assurances that amounts paid to such system from an allotment under this title will be used to supplement and not supplant the level of non-Federal funds available in the State in which such system is established to protect and advocate the rights of mentally ill individuals;

(2) assurances that such system will have a staff which is trained or being trained to provide advocacy services to mentally ill individuals;

(3) assurances that such system, and any State agency or nonprofit organization with which such system may enter into

a contract under section 104(a), will not, in the case of any individual who has a legal guardian, conservator, or representative other than the State, take actions which are duplicative of actions taken on behalf of such individual by such guardian, conservator, or representative unless such guardian, conservator, or representative request the assistance of such system; and

(4) such other information as the Secretary may be regulation prescribe.

(b) Applications submitted under this section shall remain in effect for a 3-year period, and the assurances required under this section shall be for the same 3-year period.

ALLOTMENT FORMULA AND REALLOTMENTS

SEC. 112. (a)(1) * * *

[(2) Notwithstanding paragraph (a) and subject to the availability of appropriations under section 117—

[(A) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than $125,000; and

[(B) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than $67,000.]

(2) Notwithstanding paragraph (1) and subject to the availability of appropriations under section 117—

(A) if the total amount appropriated in a fiscal year is at least $13,000,000—

(i) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall be the greater of—

(I) $140,000; or

(II) $125,000 in addition to the amount determined under paragraph (3); and

(ii) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be the greater of—

(I) $75,000; or

(II) $67,000 in addition to the amount determined under paragraph (3); and

(B) if the total amount appropriated in a fiscal year is less than $13,000,000, the amount of the allotment of the eligible system—

(i) of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not determined under paragraph (3); and

(ii) of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than $67,000 in addition to the amount determined under paragraph (3).

(3) In any case in which the total amount appropriated under section 117 for a fiscal year exceeds the total amount appropriated under such section, as in effect on the day before the date of enactment of this paragraph, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the allotments under clauses (i)(II) and (ii)(II) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

(A) the total amount appropriated under section 117 for the fiscal year for which the increase in minimum allotment is made, minus;

(B) the total amount appropriated under section 117 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 117 for such preceding fiscal year.

(b) * * *

PAYMENTS UNDER ALLOTMENTS

SEC. 113. * * *

REPORTS [BY THE SECRETARY]

SEC. 114. (a)–(b) * * *

(c) Not later than 18 months after the date of enactment of this subsection, the Comptroller General of the General Accounting Office shall prepare and submit, to the appropriate Committees of Congress, a report that—

(1) identifies whether mentally ill individuals, as defined section 102(3)(A), held in Federal, State, and local jails and prisons are subjected to abuse and neglect;

(2) describes the extent to which mentally ill individuals, as defined in section 102(3)(A), are being inappropriately confined in prisons or jails instead of being served by appropriate mental health programs, and the factors contributing to such inappropriate placements;

(3) describes model State and local programs designed to divert mentally ill individuals, as defined in section 102(3)()A), from prisons and jails, and place such individuals into appropriate mental health programs;

(4) describes the extent to which public defenders have knowledge of or have received specific training regarding the special needs of mentally ill individuals, as defined in section 102(3)(A), who are confined in prisons or jails, and the extent to which such public defenders represent such mentally ill individuals when incidents of abuse or neglect are alleged; and

(5) identifies and analyzes any other issues considered appropriate by the Comptroller General.

[TECHNICAL ASSISTANCE

[SEC. 115. The Secretary shall provide technical assistance to eligible systems with respect to activities carried out under this title.]

TECHNICAL ASSISTANCE

SEC. 115. The Secretary shall use not more than 2 percent of the amounts appropriated under section 117 to provide technical assistance to eligible systems with respect to activities carried out under this title, consistent with requests by such systems for such assistance.

ADMINISTRATION

SEC. 116. * * *

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 117. For allotments under this title, there are authorized to be appropriated $10,000,000 for fiscal year 1986, $10,500,000 for fiscal year 1987, and $11,025,000 for fiscal year 1988.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 117. For allotments under this title, there are authorized to be appropriated $14,300,00 for fiscal year 1989, $18,500,000 for fiscal year 1990, and $23,500,000 for fiscal year 1991.

TITLE II—RESTATEMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

RESTATEMENT OF BILL OF RIGHTS

SEC. 201. * * *

TITLE III—CONSTRUCTION

CONSTRUCTION

SEC. 301. * * *

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